

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

WALLACE DAWKINS,	)	CIVIL ACTION NO.: 8:18-CV-534
	)	
Plaintiff,	)	
	)	<b>DEFENDANT'S NOTICE OF AND</b>
	)	<b>PETITION FOR REMOVAL</b>
v.	)	
	)	
	)	(From the District Court of Douglas
BARNHART CRANE AND	)	County, Nebraska, Case No. CI 18-8739)
RIGGING CO.,	)	
	)	
Defendant.	)	

**DEFENDANT BARNHART CRANE AND RIGGING CO.'S**  
**NOTICE OF AND PETITION FOR REMOVAL**

Defendant Barnhart Crane and Rigging Co. ("Defendant" or "Barnhart"), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1331, 1367, and 1441, and in accordance with the Federal Rules of Civil Procedure and Nebraska Civil Rules, hereby files this Notice of and Petition for Removal of a case from the District Court of Douglas County, Nebraska, bearing Case No. CI 18-8739. As grounds for this removal, Defendant states the following:

**BACKGROUND**

1. On October 5, 2018, Plaintiff filed his Complaint, Demand for Jury Trial and Praecipe ("Complaint") against Barnhart in the District Court of Douglas County, Nebraska, Case No. CI 18-8739. A copy of the Complaint is attached with Exhibit A to this Notice.

**TIMELY REMOVAL**

2. On October 11, 2018, Barnhart received service of the Complaint by certified mail. A copy of the return summons is attached with Exhibit A to this notice. The time period under 28 U.S.C. § 1446(b) for Barnhart to file this Notice of Removal has not expired.

### **BASES FOR REMOVAL**

3. Plaintiff has asserted claims against Barnhart of race discrimination in violation of the Nebraska Fair Employment Practices Act (“NFEPA”), *Neb. Rev. Stat.* § 48-1104, *et seq.*, Title VII of the Civil Rights Act of 1964 as amended (“Title VII”), and 42 U.S.C. § 1981; retaliation in violation of NFEPA, Title VII, and 42 U.S.C. § 1981; and hostile work environment in violation of Nebraska common law.
4. This Court has original jurisdiction over Plaintiff’s Title VII and 42 U.S.C. § 1981 claims pursuant to 28 U.S.C. § 1441.
5. Plaintiff’s Nebraska state law claims under NFEPA and Nebraska common law are so related to Plaintiff’s Title VII and 42 U.S.C. § 1981 claims that they form part of the same case or controversy.
6. In particular, in his Complaint, Plaintiff relies on the same set of factual allegations to form his Title VII, 42 U.S.C. § 1981, and his state law claims. *See* Exhibit A, pp. 1-4.
7. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over Plaintiff’s Nebraska state law claims.

### **VENUE**

8. Venue is proper in this Court. The United States District Court for the District of Nebraska is the Division which encompasses Douglas County, the district in which the state court case was filed. Thus, the United States District Court for the District of Nebraska is the proper district court to which this case should be removed. *See* 28 U.S.C. §§ 1441(a) and 1446(a).

**NOTICE OF COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

9. An accurate copy of all process, pleadings, orders, and other papers or exhibits currently on file with the state court are attached to this notice of and petition for removal as Exhibit A as required by 28 U.S.C. § 1446(a).
10. Promptly after the filing of this Notice, Barnhart will serve written notice of this removal on Plaintiff through his counsel and will file a copy of this Notice of Removal with the District Court of Douglas County, Nebraska.

**REQUEST FOR PLACE OF TRIAL**

Defendant respectfully requests that trial of this action be held in Omaha, Nebraska.

WHEREFORE, Barnhart Crane and Rigging Co. respectfully requests that this case be properly removed, that the Court accept jurisdiction over the action, and that this action be entered into the docket of this Court for further proceedings as if the action had originally been instituted in this Court.

Dated: November 12, 2018.

Respectfully submitted,

/s/ Brock J. Pohlmeier

Kenneth M. Wentz III #23580

Brock J. Pohlmeier, #25817

JACKSON LEWIS P.C.

10050 Regency Circle, Suite 400

Omaha, Nebraska 68114

(402) 391-1991

(402) 391-7363 – facsimile

kenneth.wentz @jacksonlewis.com

brock.pohlmeier@jacksonlewis.com

ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2018, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

Kathleen M. Neary  
Vincent M. Powers & Associates  
411 South 13<sup>th</sup> Street, Suite 300  
Lincoln, NE 68508  
Kathleen@vpowerslaw.com

/s/ Brock J. Pohlmeier

## IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

WALLACE DAWKINS,	)	Case No.
	)	
Plaintiff,	)	
	)	COMPLAINT,
	)	DEMAND FOR JURY TRIAL
Vs.	)	AND
	)	PRAECIPE
BARNHART CRANE AND	)	
RIGGING CO.,	)	
	)	
Defendant.	)	

COMES NOW the Plaintiff, by and through his attorney, and for his causes of action against the Defendant states as follows:

1. This is an action seeking redress for the violation of the rights guaranteed to the plaintiff by the Nebraska Fair Employment Practices Act, Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C Section 1981.

2. Jurisdiction of this Court is invoked pursuant to the state laws set forth herein. This court has original jurisdiction over the state claims and concurrent jurisdiction of the federal law claims.

3. At all times relevant, the plaintiff was a resident of the State of Nebraska.

4. At all times relevant, Defendant was a foreign corporation licensed to do business and was doing business in Omaha, Douglas County, Nebraska. The Defendant is an employer as defined by the statutes set forth above.

5. Plaintiff fulfilled his administrative prerequisites to filing the instant action. The EEOC issued a right to sue letter on September 25, 2018 and the NEOC action is currently pending. The instant action is timely.

6. Plaintiff's race is African American and his color is black.

# EXHIBIT A

7. In June, 2015, Plaintiff was hired by Defendant as a dealership manager for Defendant's Omaha, Nebraska facility. Plaintiff's base salary was \$71,000.00 annually.

8. Commencing in approximately November, 2015 through the date of his wrongful termination, Plaintiff was required by Regional Director Brant Durdin (white) to stay late most nights when Durdin was in Omaha on business. Durdin also timed Plaintiff on how fast he performed his work. Durdin did not subject non-African American employees to this type of discriminatory treatment in the workplace.

9. Starting in 2016 and continuing through Plaintiff's wrongful termination, Defendant's current Dealership Manager, Nick Jones (white), repeatedly made offensive racial comments to Plaintiff, including using the word "nigga babies," voicing his anger about some states prohibiting confederate flags, and being upset that the government told he and his family they couldn't fly their confederate flags. In January, 2017, Jones tried to tackle Mr. Dawkins. On numerous occasions, Mr. Jones made it abundantly clear to Plaintiff through his words and actions that he didn't like or approve of black people.

10. In approximately April, 2017, Nick Jones was promoted to Regional Director. In this capacity, Jones excluded Mr. Dawkins from certain work activities and continued to make racially offensive comments throughout Plaintiff's employment with the Defendant. Due to Plaintiff's race/color, Jones subjected Mr. Dawkins to adverse terms, conditions and privileges of employment. The discriminatory words and comments were sufficiently patterned and/or pervasive to create a racially hostile working environment.

11. In approximately October, 2017, management level employee, Michael Honan (white) told Plaintiff he had three weeks to accept a recruiter job or he would be fired. Dawkins

reported Honan's conduct to Vice President of Branches, Randy Lewis. Lewis rescinded Honan's recruiter mandate to Dawkins.

12. Based upon discussions with former employees of the Defendant, Dawkins learned that white Dealership Managers who possessed his skills, qualifications, and experience were typically not paid less than \$87,500.00 annually. Due to his race and color, Plaintiff was paid substantially less money than similarly situated non-African American Dealership Managers.

13. On or about December 17, 2017, Honan told Plaintiff that he had heard that Dawkins was filing an EEOC charge of race discrimination and for that reason he was terminating Dawkins from Defendant's employment.

14. Upon information and belief, Nick Jones took Dawkins' position after he was fired and was likely paid \$93,000.00 or more per year.

15. Plaintiff was subjected to adverse terms, conditions, and privileges of employment due to his race and/or color and/or in retaliation for engaging in one or more protected activities or Defendant's belief Dawkins was going to engage in a protected activity.

16. As a result of the Defendant's unlawful actions, Plaintiff has sustained lost wages and the value of job related benefits and will incur future lost wages and the value of job related benefits into the future. Plaintiff has also sustained compensatory damages as a result of the Defendant's unlawful conduct.

17. All of the aforementioned illegal acts and conduct were done while the Defendant's employees, officers, and/or directors were acting in the scope and course of their employment with the Defendant.

18. Defendant's conduct was willful and/or reckless. Punitive damages are appropriate.

#### COUNT I

Plaintiff incorporates paragraphs 1 through 18 as if fully set forth herein.

19. Plaintiff's race and/or color was a motivating factor in the Defendant's decision to subject the Plaintiff to adverse terms, conditions, or privileges of employment, including, but not limited to terminating his employment, paying him a lower salary than similarly situated white employees, making offensive racial comments, and other discriminatory acts set forth herein and as to be revealed in discovery. Said conduct is violative of the Nebraska Fair Employment Practices Act, Title VII of the Civil Rights Act (as amended), and 42 U.S.C. Section 1981.

20. As a direct, proximate result of Defendant's aforementioned illegal conduct, Plaintiff has suffered compensatory damages, lost wages, the value of job related benefits and Plaintiff will continue to incur said damages into the future.

21. Due to Defendant's willful and/or reckless conduct, punitive damages are appropriate under federal law.

#### COUNT II

Plaintiff incorporates paragraphs 1 through 21 as if fully set forth herein.

22. After Plaintiff engaged in one or more protected activities and/or defendant believed Dawkins was going to engage in a protected activity, Defendant retaliated against Dawkins by terminating his employment. Said conduct is violative of the Nebraska Fair Employment Practices Act, Title VII of the Civil Rights Act (as amended), and 42 U.S.C. Section 1981.



23. As a direct, proximate result of Defendant's aforementioned illegal conduct, Plaintiff has suffered compensatory damages, lost wages, the value of job related benefits and Plaintiff will continue to incur said damages into the future.

24. Due to Defendant's willful and/or reckless conduct, punitive damages are appropriate under federal law.

### COUNT III

Plaintiff incorporates paragraphs 1 through 24 as if fully set forth herein.

25. The racially offensive comments and conduct Plaintiff was subjected to by Defendant was sufficiently patterned and/or pervasive to create a hostile working environment.

26. As a direct, proximate result of Defendant's aforementioned illegal conduct, Plaintiff has suffered and will continue to suffer compensatory damages.

27. Due to Defendant's willful and/or reckless conduct, punitive damages are appropriate under federal law.

**WHEREFORE**, Plaintiff respectfully requests that this Court assume jurisdiction herein as to all counts alleged herein and grant the following relief:

a. Declare the conduct of the Defendant to be violative of the rights of the Plaintiff under the appropriate state or federal laws;

b. Direct the Defendant to reinstate the plaintiff to the position which he held with all back pay, all the job related benefits and job related increments to which he is entitled, including interest thereon, or to find that reinstatement is not appropriate and to award him back pay and front pay according to law;

c. Award the Plaintiff compensatory damages for pain, suffering, inconvenience, humiliation and emotional distress in an amount to be determined by the jury;

- d. Award the Plaintiff punitive damages under federal law;
- e. Enjoin the Defendant from any further discrimination or retaliation against the Plaintiff;
- f. Award the Plaintiff costs and reasonable attorney's fees and such other and further relief as the Court deems just and reasonable and appropriate to correct the wrong done to him.

FOR: WALLACE DAWKINS

BY: s/Kathleen M. Neary  
Kathleen M. Neary NSBA 20212  
Vincent M. Powers & Associates  
411 South 13<sup>th</sup> Street, Suite 300  
Lincoln, NE 68508  
(402) 474-8000  
kathleen@vpowerslaw.com

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial in Omaha, Nebraska.

s/Kathleen M. Neary  
Kathleen M. Neary NSBA 20212

PRAECIPE

TO THE CLERK OF SAID COURT:

Please issue summons for service upon the Defendant's Registered Agent at the following address:

National Registered Agents, Inc.  
5601 South 59<sup>th</sup> Street  
Lincoln, NE 68516

Please forward the summons to the undersigned for service upon the defendant via certified mail, return receipt requested.

s/Kathleen M. Neary  
Kathleen M. Neary

Image ID:  
D00569746D01

**SUMMONS**

Doc. No. 569746

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA  
1701 Farnam  
Omaha NE 68183

Wallace Dawkins v. Barnhart Crane and Rigging Co.

Case ID: CI 18 8739

TO: Barnhart Crane and Rigging Co.

**FILED BY**

Clerk of the Douglas District Court  
10/05/2018

You have been sued by the following plaintiff(s):

Wallace Dawkins

Plaintiff's Attorney: Kathleen M Neary  
Address: 411 South 13th St, Suite 300  
Lincoln, NE 68508

Telephone: (402) 474-8000

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: OCTOBER 5, 2018

BY THE COURT:

*John M. Friend*  
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Barnhart Crane and Rigging Co.  
c/o National Regis Agents, Inc., RA  
5601 South 59th St  
Lincoln, NE 68516

Method of service: Certified Mail

Please issue summons to Defendant's Registered Agent: National Registered Agents, Inc. 5601 South 59th Street Lincoln, NE 68516

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

	<b>SERVICE RETURN</b>	Doc. No. 569746
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Douglas District Court  
1701 Farnam  
Omaha NE 68183

To:

Case ID: CI 18 8739 Dawkins v. Barnhart Crane and Rigging Co

Received this Summons on \_\_\_\_\_, \_\_\_\_\_. I hereby certify that on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_M. I served copies of the Summons upon the party:

by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as required by Nebraska state law.

Service and return \$ \_\_\_\_\_

Copy \_\_\_\_\_

Mileage \_\_\_\_miles \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
(Sheriff or authorized person)

### CERTIFIED MAIL PROOF OF SERVICE

Copies of the Summons were mailed by certified mail,  
TO THE PARTY: \_\_\_\_\_

At the following address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, as required by Nebraska state law.

Postage \$ \_\_\_\_\_ Attorney for: \_\_\_\_\_

The return receipt for mailing to the party was signed on \_\_\_\_\_, \_\_\_\_\_.

To: Barnhart Crane and Rigging Co.  
c/o National Regis Agents, Inc., RA  
5601 South 59th St  
Lincoln, NE 68516

From: Kathleen M Neary  
411 South 13th St, Suite 300  
Lincoln, NE 68508

# ATTACH RETURN RECEIPT & RETURN TO COURT

\*\*\* EFILED \*\*\*

Case Number: D01CI180008739

Transaction ID: 0007659342

Filing Date: 10/25/2018 03:17:08 PM CDT

Doc. No. 569746

## SERVICE RETURN

Douglas District Court  
1701 Farnam  
Omaha NE 68183

To:

Case ID: CI 18 8739 Dawkins v. Barnhart Crane and Rigging Co

certify that on

of the Summons

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<p>Complete items 1, 2, and 3.</p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Barnhart Crane + Rigging Co. c/o National Regis Agents, Inc., RA 5601 South 59th St. Lincoln, NE 68516</p> <p>2. Article Number (Transfer from service label)</p> <p>7016 0910 0000 1224 5091</p>	<p>A. Signature <u>Josh Holbrook</u> <input type="checkbox"/> Agent <u>Josh Holbrook</u> <input checked="" type="checkbox"/> Addressee</p> <p>X</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>	

### CERTIFIED MAIL PROOF OF SERVICE

Copies of the Summons were mailed by certified mail,  
TO THE PARTY: \_\_\_\_\_

At the following address: \_\_\_\_\_

on the 8<sup>th</sup> day of October, 2018, as required by Nebraska state law.

Postage \$ 6.88

Attorney for: \_\_\_\_\_

The return receipt for mailing to the party was signed on October 11, 2018

To: Barnhart Crane and Rigging Co.  
c/o National Regis Agents, Inc., RA  
5601 South 59th St  
Lincoln, NE 68516

From: Kathleen M Neary  
411 South 13th St, Suite 300  
Lincoln, NE 68508

## ATTACH RETURN RECEIPT & RETURN TO COURT

## Certificate of Service

I hereby certify that on Thursday, October 25, 2018 I provided a true and correct copy of the Return-Summons/Alias Summons to the following:

Barnhart Crane and Rigging Co. service method: Certified Mail

Signature: /s/ Neary,Kathleen,M (Bar Number: 20212)